

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 145 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VIRENDRASINH YASHWANTSINH THAKUR

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

1. Special Civil Application No. 145 of 2004
MS DR KACHHAVAH for Petitioner No. 1
MR KAMLESH KACHHAVAH for Petitioner No. 1
MS M S PANCHAL AGP for Respondent No. 1,3
RULE SERVED for Respondent No. 1,2
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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 27/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 21/11/03 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that one F.I.R. was registered against him before Kapodra Police Station at C.R.No.790/2003 on 12/10/03 for an offence punishable u/s.66, 65 & 81 of the Bombay Prohibition Act, 1949. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities.

3. On the strength of the aforesaid one registered offence and two statements of unnamed witnesses, the detaining authority found the petitioner to be a "bootlegger" and with a view to prevent him from continuing his bootlegging activities leading to a threat to public order, the impugned order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that the petitioners representation was not promptly considered and decided by the State Government and therefore, the petitioner's valuable right of making an effective representation has been denied. Therefore, the further continuance of the detention of the petitioner is not legal.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.M S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. The learned advocate for the petitioner has contended that the petitioner had submitted representation to the State Government on 23/12/03 which is placed at Annexure 'C'. It has also been contended that the said representation has not been promptly dealt with and decided by the State Gvoernment.

7. The respondents have not filed affidvait. However, the learned AGP has aruged that the representation was received by the office on 24/12/03 and thereafter there were two intervening holidays.

Thereafter, the matter was placed before the appropriate authority on 29/12/03. However, the learned AGP is not in a position to explain the delay caused in placing the matter before the appropriate authority since there were two intervening working days. Even thereafter, there was further delay in taking decision. This shows that there was a delay in considering the representation and in communicating the decision to the petitioner. The said delay has not been explained to any extent. Therefore, when the petitioner has acquired right of submitting representation by virtue of Article 22(5) of the Constitution of India and if the said right cannot be availed of, then in that event, further continuance of the detention of the detenu cannot be justified in the eye of law. In the present case, we find that there was delay in dealing with the representation of the petitioner and the said delay has not been explained. Therefore, the valuable right of the petitioner to get decided his representation within reasonable time has been denied and frustrated. Therefore, the order of detention is required to be quashed and set aside on this ground itself.

10. For the foregoing reason, this petition is allowed. The impugned order of detention dated 21/11/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Virendrasinh Yashwantsinh Thakur, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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